Legal Services (Scotland) Bill

1st Groupings of Amendments for Stage 2

This document provides procedural information which will assist in preparing for and following proceedings on the above Bill. The information provided is as follows:

- the list of groupings (that is, the order in which amendments will be debated). Any procedural points relevant to each group are noted;
- a list of any amendments already debated;
- the text of amendments to be debated on the first day of Stage 2 consideration, set out in the order in which they will be debated. **THIS LIST DOES NOT REPLACE THE MARSHALLED LIST, WHICH SETS OUT THE AMENDMENTS IN THE ORDER IN WHICH THEY WILL BE DISPOSED OF.**

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Regulatory objectives etc.

Robert Brown
Supported by: Richard Baker

219 In section 1, page 1, line 11, at end insert—
   <(ai) the interests of justice,>

Robert Brown
Supported by: Richard Baker

220* In section 1, page 1, line 20, at end insert—
   <(2) In the event of any conflict between any of the objectives, those mentioned in subsection (1)(a) and (b)(ai) take priority.>

Robert Brown

221 In section 2, page 1, line 25, leave out <and integrity> and insert <in the interests of justice, act with integrity>

Richard Baker

222 In section 2, page 1, line 25, leave out <and> and insert <in the interests of justice and with>

Fergus Ewing

1 In section 2, page 2, line 1, at end insert <(and keep clients’ affairs confidential)>

James Kelly

223 In section 2, page 2, leave out line 2 and insert—
   <( ) ensure standards of work of reasonable and ordinary care and skill,>

Richard Baker

224 In section 2, page 2, line 7, at end insert—
   <( ) treat the affairs of their clients as confidential and act in conformity with professional ethics.>

Richard Baker

225 In section 3, page 2, line 12, after <will> insert <, legislative instrument>

Fergus Ewing

2 In section 4, page 2, line 27, at end insert <or arising by virtue of Part 4>

Robert Brown
Supported by: Richard Baker

226 In section 4, page 2, line 28, leave out <, so far as practicable,
THIS IS NOT THE MARSHALLED LIST

**Nigel Don**

97 In section 4, page 2, line 28, after <as> insert <reasonably>

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**Consultation by Scottish Ministers**

**Fergus Ewing**

3 After section 4, insert—

<Consultation by Ministers

(1) Subsection (2) applies in relation to the exercise by the Scottish Ministers of their functions under Parts 2 and 3 or arising by virtue of Part 4.

(2) Where (and to the extent that) the Scottish Ministers consider it appropriate to do so in the case of an individual function, they must consult such persons or bodies as appear to them to have a significant interest in the particular subject-matter to which the exercise of the function relates.

(3) The general requirement to consult under subsection (2) has effect in conjunction with, or in the absence of, any particular consultation requirement to which the Scottish Ministers are subject in a specific (and relevant) context.>

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**Licensed legal services providers**

**Bill Butler**

227 Before section 5, insert—

<Licensed legal services providers

(1) For the purposes of this Part, a licensed legal services provider (a “licensed provider”) is a firm of solicitors or an incorporated practice which—

(a) is owned and managed to the extent of not more than 25% by a non-solicitor investor, but is otherwise owned and managed by legal professionals,

(b) provides (or offers to provide) legal services—

   (i) to the general public or otherwise, and

   (ii) for a fee, gain or reward, and

(c) does so under a licence issued by the Law Society in accordance with rules made by the Law Society under section 34 of the 1980 Act.

(2) In this Part—

   a “non-solicitor investor” is an investor who is not entitled to practise—

   (i) as a solicitor,

   (ii) in England and Wales or Northern Ireland, as a solicitor (outwith the meaning for this Act), or

   (iii) as a registered European lawyer,

   “investor” is any person who has—
(i) ownership or control of the licensed provider, or
(ii) any other material interest in it,

“legal professional” means—
(i) a solicitor,
(ii) a firm of solicitors which is not a licensed provider, and
(iii) an incorporated practice which is not a licensed provider.

Bill Butler

228 Before section 5, insert—

< Pretending to be licensed 

(1) A person commits an offence if the person—

(a) pretends to be a licensed provider or a licensed employment law services provider (or otherwise pretends to have the right to provide legal services or employment law services under this Part), or

(b) takes or uses any name, title, addition or description implying falsely that the person is a licensed provider or a licensed employment law services provider (or otherwise implying that the person has the right to provide legal services or employment law services under this Part).

(2) A person who commits an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Bill Butler

229 Before section 5, insert—

< Consequential and ancillary amendments to the 1980 Act 

(1) The 1980 Act is amended as follows.

(2) In section 34 (rules as to professional practice, conduct and discipline)—

(a) in subsection (1), after “practices” insert “and licensed legal services providers”, and

(b) in subsection (1B), after paragraph (b) insert—

“(c) prescribe the circumstances in which a licensed legal services provider may be licensed by the Council as being suitable to undertake the provision of any legal services;

(d) make provision as to persons who are suitable to be non-solicitor investors in a licensed legal services provider and as to the requirements to which they are subject;

(e) prescribe the conditions which (subject to any exceptions provided by the rules) must at all times be satisfied by licensed legal services providers if they are to remain so licensed;
(f) without prejudice to that generality, make it a condition on the licensed legal service provider that any reserved legal services provided by, or on behalf of, that provider are provided, or provided on behalf of that provider, only by a person or body entitled to do so under section 32;

(g) regulate the conduct of the affairs of licensed legal services providers; and

(h) make provision for—

(i) the manner and form in which applications for a licence under this section are to be made;

(ii) the payment of fees in connection with such applications;

(iii) the regulation of the names that may be used by licensed legal services providers;

(iv) the period within which any licence granted under this section shall (subject to the provisions of this Act) remain in force;

(v) the revocation of any such licence on the grounds that it was granted as a result of any error or fraud;

(vi) the keeping by the Society of a list containing the names and places of business of all licensed legal services providers and for the information contained in any such list to be available for inspection;

(vii) any enactment relating to solicitors (including this Act) and any rules made under such an enactment to have effect in relation to licensed legal services providers with such additions, omissions or other modifications as appear to the Council to be necessary or expedient;

(viii) the empowering of the Council to take such steps as they consider necessary or expedient to ascertain whether or not any rules applicable to licensed legal services providers by virtue of this section are being complied with.”

(3) In section 43 (guarantee fund)—

(a) in subsection (2), after paragraph (b) insert—

“(c) any licensed legal services provider, or any director, partner, manager, secretary or other employee of such a provider, notwithstanding that subsequent to the commission of that act, it may have ceased to be licensed under subsection (1B)(c) or have been wound up or had its estates sequestrated.”

(b) in subsection (3), after paragraph (cc) insert—

“(cca) to a legal services provider or any director, partner or member of it in respect of any loss suffered by it or him by reason of dishonesty on the part of any director, partner, manager, secretary or other employee of the provider;”.

(4) In section 44 (professional indemnity), after any reference to “incorporated practices” or “incorporated practice” (wherever it appears) insert “licensed legal services providers” or, as the case may be, “licensed legal services provider”.
(5) In section 65(1) (interpretation), insert the following definitions in the appropriate places—

“the 2010 Act” means the Legal Services (Scotland) Act 2010 (asp 00);

“investor” and “non-solicitor investor” have the same meaning as in Part 2 of the 2010 Act;

“licensed legal services provider” or “licensed provider” have the same meaning as in Part 2 of the 2010 Act; and

“reserved legal services” means the drawing or preparation of the documents mentioned in section 32(1)”.>
Bill Butler
266 Leave out section 17

Bill Butler
267 Leave out section 18

Bill Butler
269 Leave out section 19

Bill Butler
270 Leave out section 20

Bill Butler
271 Leave out section 21

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273 Leave out section 22

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275 Leave out section 23

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276 Leave out section 24

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277 Leave out section 25

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280 Leave out section 26

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281 Leave out section 27

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282 Leave out section 28

Bill Butler
285 Leave out section 29

Bill Butler
287 Leave out schedule 1

Bill Butler
290 Leave out schedule 2
Bill Butler
294 Leave out schedule 3

Bill Butler
295 Leave out schedule 4

Bill Butler
297 Leave out schedule 5

Bill Butler
300 Leave out schedule 6

Bill Butler
301 Leave out section 30

Bill Butler
302 Leave out schedule 7

Bill Butler
303 Leave out section 31

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304 Leave out section 32

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305 Leave out section 33

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306 Leave out section 34

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308 Leave out section 35

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309 Leave out section 36

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316 Leave out section 37

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318 Leave out section 38

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320 Leave out section 39
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322 Leave out section 40

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324 Leave out section 41

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326 Leave out section 43

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331 Leave out section 47

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332 Leave out section 48

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333 Leave out section 49

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334 Leave out section 50

Bill Butler
335 Leave out section 51

Bill Butler
336 Leave out section 52

Bill Butler
337 Leave out schedule 8

Bill Butler
338 Leave out section 53
Leave out section 54
Leave out section 55
Leave out section 56
Leave out section 57
Leave out section 58
Leave out section 59
Leave out section 60
Leave out section 61
Leave out section 62
Leave out section 63
Leave out section 64
Leave out section 65
Leave out section 66
Leave out section 67
Leave out section 68
Bill Butler
354 Leave out section 69

Bill Butler
355 Leave out section 70

Bill Butler
356 Leave out section 71

**Employment law services providers**

Richard Baker
230 Before section 5, insert—

<Employment law services providers

(1) For the purposes of this Part, a licensed employment law services provider is a person or body (whether corporate or incorporate) who—

(a) provides (or offers to provide) employment law services—

(i) to the general public or otherwise, and

(ii) for a fee, gain or reward, and

(b) does so under a licence issued by the Society in accordance with the rules made by the Society under section 34 of the 1980 Act.

(2) For the purposes of this Part, employment law services are services which consist of or include those of offering advice or representation or both advice and representation in relation to matters of employment law.

(3) An employment law services provider does not include—

(a) a solicitor,

(b) a firm of solicitors or any partner of, or person employed within, such a firm,

(c) an incorporated practice or any director of, or person employed within, such a practice, and

(d) a licensed legal services provider or any director or partner of, or person employed within, such a provider.

(4) In subsection (1)(a)(ii) the expression “fee, gain or reward” does not include any money or income generated from general membership fees of Trade Unions.>

Richard Baker
231 Before section 5, insert—

<Pretending to be licensed

(1) A person commits an offence if the person—

(a) pretends to be a licensed employment law services provider (or otherwise pretends to have the right to provide employment law services under this Part), or
(b) takes or uses any name, title, addition or description implying that the person is an employment law services provider (or otherwise implying that the person has the right to provide employment law services under this Part).

(2) A person who commits an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Richard Baker

232* Before section 5, insert—

<Consequential and ancillary amendments to the 1980 Act

(1) The 1980 Act is amended as follows.

(2) Section 34 (rules as to professional practice, conduct and discipline)–

(a) in subsection (1), after “practices” insert “and licensed employment law services providers”, and

(b) in subsection (1B), after paragraph (b) insert—

“(i) prescribe the circumstances in which a licensed employment law services provider may be licensed by the Council as being suitable to undertake the provision of employment law services;

(j) prescribe the conditions which (subject to any exceptions provided by the rules) must at all times be satisfied by licensed employment law services providers if they are to remain so licensed;

(k) regulate the conduct of the affairs of licensed employment law services providers; and

(l) make provision for—

(i) the manner and form in which applications for a licence under this section are to be made;

(ii) the payment of fees in connection with such applications;

(iii) the regulation of the names that may be used by licensed employment law services providers;

(iv) the period within which any licence granted under this section shall (subject to the provisions of this Act) remain in force;

(v) the revocation of any such licence on the grounds that it was granted as a result of any error or fraud;

(vi) the keeping by the Society of a list containing the names and places of business of all licensed employment law services providers and for the information contained in any such list to be available for inspection;

(vii) any enactment relating to solicitors (including this Act) and any rules made under such an enactment to have effect in relation to licensed employment law services providers with such additions, omissions or other modifications as appear to the Council to be necessary or expedient;
(viii) the empowering of the Council to take such steps as it considers necessary or expedient to ascertain whether or not any rules applicable to licensed employment law services providers by virtue of this section are being complied with.”

(3) In section 43 (guarantee fund)—

(a) in subsection (2), after paragraph (b) insert—

“(d) any licensed employment law services providers, or any director, partner, manager, secretary or other employee of such a provider, notwithstanding that subsequent to the commission of that act, it may have ceased to be licensed under subsection (1B)(i) or have been wound up or had its estates sequestrated.”

(b) in subsection (3), after paragraph (cc) insert—

“(ccb) to a licensed employment law services provider or any director, partner or member of it in respect of any loss suffered by it or him by reason of dishonesty on the part of any director, partner, manager, secretary or other employee of the provider;”.

(4) In section 44 (professional indemnity), after any reference to “incorporated practices” or “incorporated practice” (wherever it appears) insert “licensed employment law services providers” or, as the case may be, “licensed employment law services provider”.

(5) In section 65(1) (interpretation), insert the following definitions in the appropriate places—

“the 2010 Act” means the Legal Services (Scotland) Act 2010 (asp 00);
“investor” and “non-solicitor investor” have the same meaning as in Part 2 of the 2010 Act;
“licensed employment law services provider” or “licensed provider” have the same meaning as in Part 2 of the 2010 Act; and
“reserved legal services” means the drawing or preparation of the documents mentioned in section 32(1).”

Approval of regulators

Robert Brown

235 In section 5, page 3, line 7, leave out <or other body> and insert <body based in Scotland>

Robert Brown

233 In section 5, page 3, line 26, at end insert—

<(7) But the fees charged must not exceed the cost incurred by the Scottish Ministers in determining whether an applicant should be approved under section 6 as an approved regulator or, as the case may be, whether an approved regulator should be authorised under section 7 to exercise any of the approved regulator’s regulatory functions.>

Robert Brown

237 In section 6, page 3, line 31, at end insert—
a thorough knowledge and understanding of the regulatory objectives and the professional principles
contained in sections 1 and 2.

**Robert Brown**

239 In section 6, page 4, line 10, at end insert—

\[( ) Conditions under subsection (2) may, without prejudice to their
generality, include conditions which may—
(a) restrict the approval of the applicant by reference to particular categories of—
   (i) licensed providers,
   (ii) legal services,
(b) be given either—
   (i) without limit of time, or
   (ii) for a fixed period of at least 3 years.\]

**Fergus Ewing**

10 In section 6, page 4, line 11, leave out subsections (3) to (6)

**Robert Brown**

241 In section 6, page 4, line 11, after \(<\text{regulator}\) insert \(<\text{and what conditions, if any, to impose}
under subsection (2) or amend, add or delete under subsection (2B)}\).\>

**Bill Aitken**

242 In section 6, page 4, leave out line 13

**Robert Brown**

243 In section 6, page 4, line 22, at end insert—

\(<\text{together with, in either case, their reason for doing so}.\)\>

**Fergus Ewing**

11 In section 6, page 4, line 31, at beginning insert \(<\text{in relation to capability to act as an approved}
regulator}.\)\>

**Fergus Ewing**

12 In section 6, page 4, leave out line 33

**Fergus Ewing**

13 After section 6, insert—

\(<\text{Pre-approval consideration}\)

(1) Before deciding whether or not to approve the applicant as an approved regulator under
section 6, the Scottish Ministers must consult—

(a) the Lord President,
(b) the OFT, and such other organisation (appearing to them to represent the interests
of consumers in Scotland) as they consider appropriate,
In consulting under subsection (1), the Scottish Ministers—

(a) must send a copy of the application to the consultees,
(b) may send a copy of any revised application to any (or all) of them.

The Scottish Ministers must, with reasons, notify the applicant if they intend to—

(a) refuse to approve it as an approved regulator, or
(b) impose conditions under section 6(2).

If notification is given to the applicant under subsection (3), it has 28 days beginning with the date of the notification (or such longer period as the Scottish Ministers may allow) to—

(a) make representations to the Scottish Ministers,
(b) take such steps as it may consider expedient.

Role of the Lord President in approval of regulators

Fergus Ewing

4 In section 5, page 3, line 20, after <their> insert <(or the Lord President’s)>.

Robert Brown
Supported by: Bill Aitken

236 In section 6, page 3, line 28, after <may> insert <, with the consent of the Lord President,>.

Fergus Ewing

5 In section 6, page 3, line 30, at beginning insert <for regulating licensed legal services providers in accordance with this Part,>.

Fergus Ewing

6 In section 6, page 3, leave out line 31 and insert—

<\(i\) the necessary expertise as regards the provision of legal services (including as deriving from that of the persons within it).>

Fergus Ewing

7 In section 6, page 3, leave out line 34.

Bill Aitken

238 In section 6, page 4, line 9, after <may> insert <, with the consent of the Lord President,>.

Fergus Ewing

8 In section 6, page 4, line 10, at end insert—

<\(2A\) The Scottish Ministers are to impose under subsection (2) such particular conditions relating to the expertise mentioned in subsection (1)(a)(i) as are reasonably sought by the Lord President when consulted under section (Pre-approval consideration)(1).>
In section 6, page 4, line 10, at end insert—

<(  ) The Scottish Ministers may remove or vary any conditions imposed under subsection (2)—

(a) after consulting the approved regulator, and

(b) where the conditions arose by virtue of subsection (2A), with the Lord President’s agreement.>

In section 6, page 4, line 10, at end insert—

<(2B) The Scottish Ministers may, with the consent of the Lord President, amend, add or delete any conditions imposed under subsection (2).>

In section 6, page 4, line 33, at end insert—

<(  ) Before making regulations under subsection (7), the Scottish Ministers must consult the Lord President.>

After section 6, insert—

Lord President’s agreement

(1) Despite section 6(1), the Scottish Ministers must not approve the applicant as an approved regulator unless the Lord President agrees to its being approved as such.

(2) For the purpose of subsection (1), that agreement may be withheld only if the Lord President is not satisfied that the applicant has the expertise mentioned in section 6(1)(a)(i).>

In section 7, page 5, line 14, leave out subsections (6) to (9)  

In section 7, page 5, leave out line 33  

In section 7, page 5, line 34, leave out subsection (11)  

After section 7, insert—

Request for authorisation

(1) A request for authorisation under section 7 may be—
(a) made at any reasonable time (including at the same time as applying for approval under section 6),

(b) withdrawn by the approved regulator (or applicant) at any time by giving the Scottish Ministers written notice to that effect.

(2) The Scottish Ministers must, with reasons, notify the approved regulator (or applicant) if they intend to—

(a) withhold their authorisation, or

(b) impose conditions under section 7(4)(b).

(3) If notification is given to the approved regulator (or applicant) under subsection (2), it has 28 days beginning with the date of the notification (or such longer period as the Scottish Ministers may allow) to—

(a) make representations to the Scottish Ministers,

(b) take such steps as it may consider expedient.

(4) The approved regulator (or applicant) must provide the Scottish Ministers with such information as they may reasonably require for their consideration of its request for their authorisation.

(5) In section 7 and this section, a reference to authorisation means initial or renewed authorisation.

Compensation

Fergus Ewing

169 In section 8, page 6, line 7, at end insert—

<(  ) the compensation rules (see sections (Compensation rules: general) and (More about compensation rules))>,

Robert Brown

261 In section 14, page 8, line 36, at end insert—

<(  ) compensation (see section (Compensation))>,

Fergus Ewing

170 After section 19, insert—

<Compensation arrangements

Choice of arrangements

(1) An approved regulator must proceed with either option A or option B as regards a fund (a compensation fund) for making good such relevant losses as may be suffered by reason of dishonesty on the part of its licensed legal services providers.

(2) Option A is for the approved regulator to maintain a compensation fund (of its own) in relation to its licensed providers.

(3) If option A is proceeded with, the compensation fund is to be—
COMPENSATION RULES: GENERAL

(1) For the purposes of this Part, the compensation rules are rules in pursuance of (as the case may be)—
   (a) option A in section (Choice of arrangements), or
   (b) option B in that section.

(2) In pursuance of option A, the rules must—
   (a) state—
       (i) the purpose of the approved regulator’s compensation fund,
       (ii) as a minimum, the monetary amount to be contained in that fund,
   (b) describe the way in which that fund is to be administered by the approved regulator,
   (c) specify the criteria for qualifying for payment out of that fund,
   (d) provide for the procedure for—
       (i) making claims for such payment,
       (ii) determining such claims,
   (e) require the making of contributions to that fund by a licensed provider in accordance with the relevant scale of annual contributions fixed by virtue of section (Choice of arrangements)(3)(b),
   (f) make provision for the destination (or distribution) of that fund in the event that the approved regulator ceases to operate.

(3) In pursuance of option B, the rules must require the making of contributions to the Guarantee Fund by a licensed provider in accordance with the relevant scale of annual contributions fixed under paragraph 1(3) of Schedule 3 to the 1980 Act.
Robert Brown

171A As an amendment to amendment 171, line 24, at end insert <but only if these have been approved by the Council of the Law Society after a report confirming the fairness of the arrangements has been obtained from an independent actuary.>

Fergus Ewing

172 After section 19, insert—

<More about compensation rules>

(1) Compensation rules may include such further compensation arrangements as to licensed providers for which provision is (in the approved regulator’s opinion) necessary or expedient.

(2) The Scottish Ministers may by regulations make further provision about compensation arrangements as to licensed providers, including (in particular)—

(a) for the content of compensation rules,

(b) in connection with a compensation fund, for functions of approved regulators and licensed providers,

(c) so far as concerning the relevant scale of annual contributions to the Guarantee Fund referred to in paragraph 1(3) of Schedule 3 to the 1980 Act, for functions of the Law Society.

(3) In sections (Choice of arrangements) and (Compensation rules: general) and this section, a reference to the Guarantee Fund is to the Scottish Solicitors Guarantee Fund (which is vested in the Law Society under section 43(1) of the 1980 Act).>

Robert Brown

268 After section 19, insert—

<Compensation>

Practice rules must—

(a) require licensed providers to keep in place sufficient arrangements for compensating persons who, in the opinion of the approved regulator, suffer pecuniary loss by reason of dishonesty on the part of that provider in providing legal services,

(b) include provision for ensuring that such persons may be compensated even although the licensed provider no longer provides such services or is no longer in existence.>

Fergus Ewing

210 After section 91, insert—

<Guarantee Fund>

Use of Guarantee Fund

In section 43 (Guarantee Fund) of the 1980 Act—

(a) in subsection (2)—

(i) the word “or” immediately preceding paragraph (b) is repealed,
(ii) after paragraph (b) insert “; or
(c) any licensed legal services provider or any person within it, even if—
   (i) the Society is not its approved regulator, or
   (ii) subsequent to the act concerned it has ceased to operate.”,
(b) in subsection (3), after paragraph (cc) insert—
   “(cd) to a licensed provider or an investor therein in respect of a loss suffered
   by reason of dishonesty to which subsection (2)(c) relates in connection
   with the licensed provider’s provision of legal services (with the same
   meaning as for Part 2 of the 2010 Act);”,
(c) in subsection (7)(c), after “incorporated practice” insert “or a licensed provider”,
(d) after subsection (7) insert—
   “(8) In the case of licensed providers, this section and Part I of Schedule 3 apply in
   relation to (and only to) such licensed providers as are regulated by an
   approved regulator that in furtherance of section (Choice of arrangements)(4)
   of the 2010 Act does not maintain a compensation fund as referred to in that
   section.
(9) In this section and paragraph 1 of Schedule 3—
   “approved regulator”,
   “investor”,
   are to be construed in accordance with Part 2 of the 2010 Act.”.

Fergus Ewing

211 After section 91, insert—

<Contributions to the Fund
   (1) In Schedule 3 (the Scottish Solicitors Guarantee Fund) to the 1980 Act, in paragraph
       1—
       (a) in sub-paragraph (2A)—
           (i) the words “directors of incorporated practices” become head (a),
           (ii) after that head (as so numbered) insert “; or
           (b) investors in licensed legal services providers.”,
       (b) in sub-paragraph (2B)—
           (i) the words from “by every” to the end become head (a),
           (ii) in that head (as so numbered), for “scale of such” substitute “relevant scale
                of annual corporate”,
           (iii) after that head (as so numbered) insert “; and
           (b) by every licensed provider in respect of each year during which or part
               of which it operates as such under the licence issued by its approved
               regulator a contribution (also an “annual corporate contribution”) in
               accordance with the relevant scale of annual corporate contributions
               referred to in sub-paragraph (3).”,
       (c) in sub-paragraph (3)—
(i) for “scale” in the first place where it occurs substitute “scales”,
(ii) the words from “, which scale” to the end are repealed,
(d) after sub-paragraph (3) insert—
“(3A) The scales of annual corporate contributions—
(a) are to be fixed under sub-paragraph (3) by reference to all relevant factors, including—
   (i) in the case of incorporated practices, the number of solicitors that they have as directors or employees,
   (ii) in the case of licensed providers, the number of solicitors that they have as investors or employees,
(b) may otherwise make different provision as between incorporated practices and licensed providers.”,
(e) in sub-paragraph (4), after “incorporated practice” insert “or a licensed provider”,
(f) in sub-paragraph (5), after “incorporated practice” insert “and licensed provider”,
(g) in sub-paragraph (8), after “incorporated practice” insert “or a licensed provider”.

(2) In Schedule 3 to the 1980 Act, in paragraph 3(2)—
(a) for “and incorporated practices” substitute “, incorporated practices and licensed providers”,
(b) for “or incorporated practice or practices” substitute “, incorporated practice or practices or licensed provider or providers”.

Regulatory schemes

Robert Brown

247 In section 8, page 6, line 8, at end insert—

<(  ) include provision to ensure that legal services provided by the licensed provider are adequately supervised to ensure that they are provided competently and effectively,
(  ) include provision to maintain a record of any disciplinary action taken against the Head of Legal Services or any designated person within the licensed provider,>

Robert Brown

248 In section 8, page 6, line 10, at end insert—

<(d) further the regulatory objectives and ensure that licensed legal services providers adhere to the professional principles,>

Robert Brown

249 In section 8, page 6, line 14, at end insert—

<(  ) include any provision authorised by regulations under subsection (5),>
Robert Brown
Supported by: Bill Aitken

250* In section 8, page 6, line 19, leave out from <they> to <such> in line 21 and insert—

< ( ) the Lord President has consented, and
( ) they have consulted such>

Regulatory conflicts

Fergus Ewing

19 In section 9, page 6, line 29, leave out <to be in the regulatory scheme by section 8(2)(b)> and insert <by section 8(2)(b) to be in the regulatory scheme>

Robert Brown
Supported by: Bill Aitken

252 In section 9, page 7, line 1, after <may> insert <, with the consent of the Lord President,>

Fergus Ewing

20 In section 9, page 7, line 2, leave out <that> and insert <(such as>

Definitional reference to non-solicitor investors

Fergus Ewing

98 In section 10, page 7, line 15, leave out <outside> and insert <non-solicitor>

Fergus Ewing

101 In section 17, page 10, line 9, leave out <outside> and insert <non-solicitor>

Fergus Ewing

115 In section 51, page 29, line 14, leave out <An outside> and insert <A non-solicitor>

Fergus Ewing

116 In section 51, page 29, line 21, leave out <An outside> and insert <A non-solicitor>

Fergus Ewing

176 In section 52, page 30, leave out lines 15 to 18 and insert—

< (b) a “non-solicitor investor” in a licensed provider is an investor who is not entitled to practise—

(i) as a solicitor,

(ii) in England and Wales or Northern Ireland, as a solicitor (outwith the meaning for this Act), or

(iii) as a registered European lawyer.>
THIS IS NOT THE MARSHALLED LIST

Fergus Ewing
121 In schedule 8, page 76, line 14, leave out <outside> and insert <non-solicitor>

Fergus Ewing
122 In schedule 8, page 76, line 23, leave out <outside> and insert <non-solicitor>

Fergus Ewing
123 In schedule 8, page 76, line 24, leave out <an outside> and insert <a non-solicitor>

Fergus Ewing
124 In schedule 8, page 76, line 37, leave out <an outside> and insert <a non-solicitor>

Fergus Ewing
125 In schedule 8, page 77, line 1, leave out <an outside> and insert <a non-solicitor>

Fergus Ewing
126 In schedule 8, page 77, line 4, leave out <an outside> and insert <a non-solicitor>

Exemption from fitness test

Fergus Ewing
21 In section 10, page 7, line 15, leave out <(including for section 49(2))>

Fergus Ewing
99 In section 10, page 7, line 22, at end insert—
<(  ) See also sections 43(6)(b), 45(3A), 49(2), (Exemption from fitness test)(3) and 52(2)(b) and paragraph 3A(2) of schedule 8 (as well as sections 11 and 12).>

Fergus Ewing
108 After section 49, insert—
<Exemption from fitness test>

(1) Section 49(1) is subject to this section.

(2) The approved regulator need not act as required by that section in relation to any exemptible investor in the licensed provider.

(3) Licensing rules must explain—
(a) any circumstances in which the approved regulator proposes to rely on subsection (2),
(b) any threshold below the percentage specified in subsection (4) by reference to which it proposes to rely on subsection (2),
(c) where it proposes to rely on subsection (2), its reasons.

(4) In subsection (2), an “exemptible investor” is an investor who has less than a 10% stake in the total ownership or control of the licensed provider.>
Fergus Ewing

132 In schedule 8, page 77, line 23, at end insert—

<Exemption from notification requirements>

3A(1) An approved regulator may in relation to any exemptible investor in a licensed provider waive the requirements to give it information (or notification) under paragraphs 1 and 3.

(2) Licensing rules must explain—

(a) any circumstances in which the approved regulator proposes to rely on sub-paragraph (1),

(b) any threshold below the percentage specified in subsection (3) by reference to which it proposes to rely on sub-paragraph (1),

(c) where it proposes to rely on sub-paragraph (1), its reasons.

(3) In sub-paragraph (1), an “exemptible investor” is (as the case may be)—

(a) an investor who has less than a 10% stake in the total ownership or control of the licensed provider, or

(b) a person whose intended acquisition of an interest in the licensed provider is of less than a 10% stake in the total ownership or control of the licensed provider.>

Licensing rules

Robert Brown

254 In section 10, page 7, line 22, at end insert—

<(  ) Rules made in pursuance of subsection (1)(c) must include provision for licences to be subject to renewal after a period of one year from the date of issue, unless previously revoked or suspended.>

Fergus Ewing

22 In section 11, page 7, line 24, leave out <made in pursuance of section 10(1)(a)>

Robert Brown

256* In section 11, page 7, line 34, at end insert <, or

(  ) reducing standards of competent service within the legal services market,>

Fergus Ewing

23 In section 12, page 8, line 10, after <other> insert <relevant>

Practice rules

Robert Brown

260 In section 14, page 8, line 33, at end insert—

<(  ) avoidance of conflict of interest,>
In section 14, page 8, line 34, leave out <(including for section 45(4))>.

Robert Brown

In section 14, page 9, line 7, at end insert—

< ( ) Rules made in pursuance of subsection (1)(f) may allow the approved regulator to take one or more of the following measures, in relation to a licensed provider, if it considers that to be appropriate in the circumstances of the case—

(a) setting performance targets,
(b) directing that action be taken,
(c) publishing a statement of censure,
(d) imposing a financial penalty in accordance with section 15,
(e) amending the condition of its licence,
(f) revoking its licence.>

In section 15, page 9, line 21, leave out from <approved regulator> to end of line 22 and insert <Scottish Ministers (but the approved regulator may collect it on their behalf).>

In section 16, page 9, line 36, at end insert <specified in the scheme>.

Ban for improper behaviour

In section 14, page 9, line 13, at end insert—

< ( ) See also sections 43(6)(a), 45(4) and (Ban for improper behaviour)(4) (as well as sections 15 to 19).>

After section 50, insert—

<Ban for improper behaviour>

(1) Where an approved regulator determines that a non-solicitor investor in a licensed legal services provider has contravened section 51(1) or (2), the approved regulator must disqualify the investor from having an interest in the licensed provider.

(2) A disqualification under subsection (1)—

(a) may be—

(i) without limit of time, or
(ii) for a fixed period,

(b) extends so as to apply in relation to every licensed provider (including a licensed provider that is subject to the regulation of a different approved regulator).>
(3) Before disqualifying an investor under subsection (1), the approved regulator must give the investor 28 days (or such longer period as it may allow) to—

(a) make representations to it,

(b) take such steps as the investor may consider expedient.

(4) Practice rules must—

(a) set procedure (which the approved regulator is to follow) for imposing a disqualification under subsection (1),

(b) allow for review (and lifting) by the approved regulator of a disqualification imposed by it under that subsection.

(5) A person who is disqualified under subsection (1) may appeal against the disqualification—

(a) to the sheriff,

(b) within the period of 3 months beginning with the date on which the disqualification is imposed.

Fergus Ewing

117 In section 51, page 29, line 22, after <interfere> insert <improperly>

Internal governance

Robert Brown
Supported by: Bill Aitken

272 In section 22, page 11, line 37, after <may> insert <, with the consent of the Lord President,>

Regulatory functions

Fergus Ewing

27 In section 23, page 12, line 10, leave out <any such functions that the approved regulator has as regards> and insert <the approved regulator’s functions of regulating>

Robert Brown

274 In section 23, page 12, line 20, leave out from <but> to the end of line 23

Fergus Ewing

28 In section 24, page 12, line 25, after <assess> insert <the performance of>

Fergus Ewing

29 In section 24, page 13, line 14, after <delegate> insert <any of>
Robert Brown  
Supported by: Bill Aitken

278  In section 26, page 13, line 23 after <may> insert <, with the consent of the Lord President,>

Fergus Ewing

30  In section 26, page 13, line 24, leave out <to be necessary or expedient for them to have> and insert <appropriate>

Bill Aitken

279  In section 26, page 13, leave out line 28

Fergus Ewing

31  In section 27, page 13, line 32, leave out <to it, or>

Performance

Fergus Ewing

32  Before section 28, insert—

<Review of own performance>

(1) An approved regulator must review annually its performance.

(2) In particular, a review is to cover the following matters—

(a) the approved regulator’s compliance with section 62,
(b) the exercise of its regulatory functions,
(c) the operation of its internal governance arrangements,
(d) its compliance with any measures applying to it by virtue of section 29(4)(a) or (b).

(3) The approved regulator must send a report on the review to the Scottish Ministers.

(4) The report must contain a copy of the approved regulator’s annual accounts (but only so far as they are relevant in connection with its functions under this Part).

(5) The Scottish Ministers must lay a copy of the report before the Scottish Parliament.

(6) The Scottish Ministers may by regulations make further provision about—

(a) the review of approved regulators’ performance,
(b) reports on reviews of their performance.>

Fergus Ewing

33  In section 28, page 14, line 7, leave out <its duties under>

Robert Brown  
Supported by: Bill Aitken

283  In section 29, page 14, line 37, at end insert—
<( ) The Scottish Ministers may only take the measures mentioned in subsection (4)(a), (b), (e) and (f) with the consent of the Lord President.>

Robert Brown
Supported by: Bill Aitken

284 In section 29, page 14, line 38 after <may> insert <, with the consent of the Lord President,>

Fergus Ewing

34 In section 29, page 15, line 4, at end insert—

<( ) Before making regulations under subsection (6), the Scottish Ministers must consult every approved regulator.>

Robert Brown

286 After section 29, insert—

<Annual report to the Parliament
Scottish Ministers must make a report to the Parliament annually on the anniversary of this section coming into force as to the extent to which the regulatory activities of approved regulators have, in the view of Scottish Ministers—

(a) affected,
(b) prevented,
(c) restricted,
(d) distorted, or
(e) increased

competition and quality of service in the legal services market, with particular regard to any policy statements issued by approved regulators under section 63.>

Bill Aitken

288 In schedule 2, page 63, leave out line 38

Bill Aitken

289 In schedule 2, page 64, line 1, leave out <other>

Bill Aitken

291 In schedule 3, page 65, line 19, after <may> insert <, with the consent of the Lord President,>

Bill Aitken

292 In schedule 3, page 65, leave out line 25

Bill Aitken

293 In schedule 3, page 65, line 26, leave out <other>

Fergus Ewing

35 In schedule 4, page 69, line 15, leave out <application is determined> and insert <Scottish Ministers notify the approved regulator of their determination of the application>
In schedule 4, page 69, line 18, at end insert—

<(  ) On an appeal under this paragraph—

(a) the Court may—

(i) uphold, vary or quash the decision that is the subject of the appeal,

(ii) make such further order as is necessary in the interests of justice,

(b) the Court’s determination is final.>

In schedule 4, page 70, line 1, leave out <period of>

In schedule 5, page 71, leave out line 22

In schedule 6, page 73, leave out line 17

In schedule 6, page 73, leave out lines 24 to 33

In section 35, page 17, line 33, leave out from beginning to <expedient> in line 34 and insert <No regulations are to be made under subsection (1) or (2) unless the Scottish Ministers believe that their intervention under this section is necessary, as a last resort,>

As an amendment to amendment 38, line 2, after <Scottish Ministers> insert <reasonably>

In section 35, page 17, line 33, after <only> insert <with the consent of the Lord President and>

In section 36, page 18, line 13, after <a> insert <valid>

In section 36, page 18, line 14, leave out <as construed by reference to section 15(1)> and insert <such as may be imposed under section 15(1)(b) or 53(5)>
Fergus Ewing
41 In section 37, page 19, leave out lines 13 and 14 and insert—

<( ) a litigation practitioner,>

Fergus Ewing
42 In section 37, page 19, line 17, leave out <further provision about> and insert—

<(i) provision specifying other categories of entity that are, or are not, eligible to be a licensed provider,

(ii) further provision about criteria for>

Fergus Ewing
43 In section 37, page 19, line 21, at end insert—

<( ) Before making regulations under subsection (6)(b), the Scottish Ministers must consult every approved regulator.>

Fergus Ewing
94 In section 99, page 58, line 36, at end insert—

<( ) section 37(6)(a)(i),>

Fergus Ewing
95 In section 101, page 60, line 7, at end insert—

<( ) a reference to a litigation practitioner is to a person having a right to conduct litigation, or a right of audience, by virtue of section 27 of the 1990 Act.>

Fergus Ewing
96 In schedule 9, page 79, line 17, at end insert—

<litigation practitioner>

Ownership of licensed providers

Bill Aitken
310 In section 37, page 18, line 24, leave out <36(2)> and insert <section (Majority ownership)(1)(c)>

Bill Aitken
311 In section 37, page 18, line 27, leave out <36(2)> and insert <section (Majority ownership)(1)(c)>

Bill Aitken
312 In section 37, page 18, leaves out lines 32 to 34

Bill Aitken
313 In section 37, page 18, line 35, leave out <But> and insert <Subject to section (Majority ownership)(1),>
Bill Aitken

314 In section 37, page 19, line 17, after <make> insert <, subject to section (Majority ownership)(1),>

Bill Aitken

315 In section 37, page 19, line 19, leave out <36(2)> and insert <(Majority ownership)(1)(c)>

Robert Brown
Supported by: Bill Aitken

317 After section 37, insert—

<Majority ownership>

(1) An entity is eligible to be a licensed provider only if—

(a) at least 51% of the entity is owned, managed and controlled by the persons or bodies specified in any one of more of the following sub-paragraphs—

(i) solicitors,
(ii) firms of solicitors or incorporated practices, or
(iii) members of other regulated professions,

(b) it is not wholly owned, managed and controlled by solicitors, firms of solicitors or incorporated practices, and

(c) it has within it, for the provision of legal services, at least one solicitor who holds a practising certificate that is free from conditions (as construed by reference to section 15(1) of the 1980 Act.

(2) In subsection (1)(a)(iii), a “regulated profession” means a professional activity or group of professional activities, access to which, the pursuit of which, or one of the modes of pursuit of which is subject, directly or indirectly, by virtue of legislative, regulatory or administrative provisions to the possession of specific professional qualifications.>

Fergus Ewing

378 After section 99, insert—

<Further modification>

(1) The Scottish Ministers may by regulations made by statutory instrument—

(a) amend the percentage specified in section (Majority ownership)(1)(a), or
(b) repeal section (Majority ownership).

(2) But regulations may be made under subsection (1) only if the Scottish Ministers believe that the effect of the amendment or (as the case may be) repeal would be—

(a) compatible with the regulatory objectives, and
(b) appropriate in any other relevant respect.

(3) Before making regulations under subsection (1), the Scottish Ministers must consult—

(a) the Lord President,
(b) the Law Society,
(c) every approved regulator,
(d) the OFT, and such other organisation (appearing to them to represent the interests of consumers in Scotland) as they consider appropriate,

(e) such other person or body as they consider appropriate.

(4) A statutory instrument containing regulations under subsection (1) is not to be made unless a draft of the instrument has been laid before, and approved by resolution of, the Scottish Parliament.

Will writers

Fergus Ewing

173 In section 37, page 19, line 15, after <agent> insert <or will writer>

Fergus Ewing

179 In section 57, page 33, line 32, after <agent> insert <or will writer>

Fergus Ewing

180 In section 58, page 34, line 31, after <agent> insert <or will writer>

Operational positions

Fergus Ewing

44 In section 39, page 20, line 15, after second <a> insert <valid>

Fergus Ewing

45 In section 39, page 20, line 15, leave out <as construed by reference to section 15(1)> and insert <such as may be imposed under section 15(1)(b) or 53(5)>

Fergus Ewing

46 In section 39, page 20, line 27, at end insert—

   <(aa) adhere to the professional principles,>

Fergus Ewing

47 In section 39, page 20, line 38, leave out <as regards> and insert <for exercising>

Fergus Ewing

48 In section 39, page 21, line 4, at end insert <(in their capacity as such)>

Robert Brown

319 In section 39, page 21, line 6, at end insert—

   <( ) Before making regulations under subsection (9), the Scottish Ministers must consult the Lord President.>
Fergus Ewing

49  In section 40, page 21, line 33, at end insert <(in their capacity as such)>

Robert Brown

321  In section 40, page 21, line 33, at end insert—

<(  ) Before making regulations under subsection (7), the Scottish Ministers must consult the Lord President.>

Robert Brown

323  In section 41, page 22, line 14, at end insert—

<(  ) Before making regulations under subsection (5), the Scottish Ministers must consult the Lord President.>

Fergus Ewing

50  In section 43, page 23, line 34, leave out <Rules made in pursuance of section 10(1)(b) and (c) must (additionally)> and insert <Practice and licensing rules respectively must>

Fergus Ewing

51  In section 43, page 23, line 37, at end insert—

<(  ) A licensed provider which or another person who is aggrieved by a direction under subsection (4) (or both jointly) may appeal against the direction—

(a) to the sheriff,

(b) within the period of 3 months beginning with the date on which the direction is given.>

Fergus Ewing

102  In section 45, page 25, line 12, at end insert—

<(3A) Licensing rules must provide that the licensed provider’s licence may be revoked or suspended if the licensed provider wilfully disregards a disqualification imposed under section 44.>

Designated persons

Fergus Ewing

52  In section 47, page 26, line 31, after <is> insert <written>

Fergus Ewing

53  In section 47, page 26, line 37, leave out <or manager>

Robert Brown

330  In section 47, page 26, line 38, leave out from <, or> to end of line 39
54 In section 47, page 27, line 4, leave out subsection (4)

Fergus Ewing

55 After section 47, insert—

<Working context

(1) A Head of Legal Services is, in furtherance of section 39(5)(aa) and (b), responsible for ensuring that there is (by or under the direction of the Head) adequate supervision of the legal work carried out by the designated persons within the licensed provider.

(2) Only a designated person within a licensed provider may carry out legal work in connection with its provision of legal services.

(3) Nothing in this Part affects the operation of—

(a) section 32 of the 1980 Act or any other enactment which requires that a particular sort of legal work be carried out by an individual of a particular description (or in a particular way), or

(b) any rule of professional practice, conduct or discipline (whether for solicitors or otherwise) which properly so requires.>

Outside investors

Fergus Ewing

103 In section 49, page 27, line 19, leave out <outside> and insert <non-solicitor>

Fergus Ewing

104 In section 49, page 27, line 22, leave out from <may> to <but> in line 23

Fergus Ewing

105 In section 49, page 27, line 24, leave out <an outside> and insert <a non-solicitor>

Fergus Ewing

106 In section 49, page 27, line 29, at end insert—

<( ) But the approved regulator need not act as required by licensing rules made under subsection (2)(b) if, by such time as it may reasonably appoint, the licensed provider demonstrates to it that (following disqualification as required by section (Ban for improper behaviour)(1) or otherwise) the investor no longer has the relevant interest.>

Fergus Ewing

107 In section 49, page 27, line 31, leave out <outside> and insert <non-solicitor>

Fergus Ewing

109 In section 50, page 28, line 3, leave out <an outside> and insert <a non-solicitor>
Fergus Ewing

110 In section 50, page 28, line 7, leave out <(including associations),> and insert—

<(  ) family, business or other associations (so far as bearing on character),>

Robert Brown

110A As an amendment to amendment 110, line 2, at end insert <and suitability to be such an investor>

Fergus Ewing

111 In section 50, page 28, line 18, leave out <An outside> and insert <A non-solicitor>

Fergus Ewing

112 In section 50, page 29, line 5, leave out subsection (4)

Fergus Ewing

113 In section 50, page 29, line 10, at end insert—

<(  ) Where a non-solicitor investor is a body, it is relevant as respects the investor’s fitness for having an interest in a licensed provider whether or not the persons controlling the body’s affairs would (if they were investors in the licensed provider in their own right) be held to be fit in that regard.>

Robert Brown

113A As an amendment to amendment 113, line 3, leave out <controlling> and insert <having control or substantial influence in>

More about investors

Fergus Ewing

174 In section 52, page 29, line 34, leave out from <including> to end of line 6 on page 30

Fergus Ewing

175 In section 52, page 30, line 8, at end insert—

<(2A) The Scottish Ministers may by regulations—

(a) amend the percentage specified in section (Exemption from fitness test)(4) and paragraph 3A(3) of schedule 8,

(b) amend (by addition, elaboration or exception) a definition in subsection (4).

(2B) Regulations under subsection (2)(a) may (in particular)—

(a) impose requirements to which a licensed provider, or an investor in a licensed provider, is subject,

(b) specify criteria or circumstances by reference to which a non-solicitor investor is to be presumed, or held, to be fit (or unfit),

(c) set out—
(i) what amounts (to any extent) to ownership, control or another material interest,
(ii) what interest (or type) is relevant as regards a particular percentage stake in ownership or control,
(iii) by reference to a family, business or other association, what other interest (or type) also counts towards such a stake.

Robert Brown
175A As an amendment to amendment 175, line 2, after <Scottish Ministers> insert <with the consent of the Lord President>

Fergus Ewing
118 In section 52, page 30, line 9, leave out subsection (3)

Fergus Ewing
119 In section 52, page 30, line 12, after <has> insert <(to any extent)>

Fergus Ewing
177 In section 52, page 30, line 18, at end insert—
<( ) In sections 49 to 51, this section and schedule 8, a reference to a licensed provider includes an applicant to become one.>

Fergus Ewing
127 In schedule 8, page 77, line 4, leave out <(including)>

Fergus Ewing
178 In schedule 8, page 77, leave out lines 6 and 7 and insert—
<(ii) because the person, having ceased to be entitled to practise as mentioned in section 52(4)(b) (while remaining as an investor), comes within the definition there.>

Fergus Ewing
129 In schedule 8, page 77, line 12, leave out <(1)(c)> and insert <(1)(c)(i)>

Fergus Ewing
130 In schedule 8, page 77, line 14, at end insert—
<(3A) In a case falling within sub-paragraph (1)(c)(ii), the licensed provider must (as soon as practicable) notify the approved regulator of the fact.>

Fergus Ewing
131 In schedule 8, page 77, line 18, leave out <or (3)> and insert <, (3) or (3A)>
Discontinuance of services

Fergus Ewing

56 In section 53, page 30, line 23, after <reason> insert «(except revocation or suspension of its licence under this Part)»

Fergus Ewing

57 In section 54, page 31, line 8, after <reason> insert «(except revocation or suspension of its licence under this Part)»

Professional practice

Fergus Ewing

58 In section 57, page 33, leave out lines 30 and 31 and insert—

<(  ) acting as a litigation practitioner,> 

Fergus Ewing

179 In section 57, page 33, line 32, after <agent> insert «or will writer»

Fergus Ewing

59 In section 57, page 34, line 11, at end insert—

<(  ) the Court’s determination is final.> 

Fergus Ewing

60 In section 58, page 34, leave out lines 29 and 30 and insert—

<(  ) acting as a litigation practitioner,> 

Fergus Ewing

180 In section 58, page 34, line 31, after <agent> insert «or will writer»

Fergus Ewing

61 In section 59, page 35, line 9, after <implying> insert «falsely»

Fergus Ewing

62 In section 60, page 35, line 32, leave out «(with any necessary modifications)»

Fergus Ewing

63 In section 60, page 35, line 34, at end insert «but with any necessary modifications»